

Selected Documents from Claim File

Claim No. LRF-2000-0821-01

Claim Amt. : \$10,774.68 Initial Entry Date : 08/28/2000

Claimant : Western Rock Products Corporation

Property Desc. : See Comments

Property Addr. : 166 S 200 E

Cedar City, UT 847203305

STATUS : PENDING (BOARD HEARING)

Comments Page: 001 UserID: kschwab

Beginning 4.5 feet North of the southeast corner of Lot 18, Plat B, CEDAR CITY SURVEY; West 12.0 rods; North 8.0 rods; East 70.5 feet; South 82.0 feet; East 127.5 feet; South 50.0 feet to the Point of Beginning.

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : -

Firm Nm : Snow Nuffer Engstrom Drake Wade & S

Name : Terry L Wade

192 E 200 N, Third Floor

PO Box 400

St George, UT 847210400

(435) 674-0400

Type : Claimant Address

DOPL # : 00-314934-5550

Firm Nm : Western Rock Products Corporation

Name :

820 N 1080 E

St George, UT 847703204

(435) 688-3931

Type : Home Owner - Secondary

DOPL # : -

Firm Nm :

Name : Barry J Gray (sold to Fox)

166 S 200 E

Cedar City, UT 847203305

() -

Type : Home Owner - Primary

DOPL # : -

Firm Nm :

Name : John R Fox (subsequent owner)

166 S 200 E

Cedar City, UT 847203305

() -

Type : Non-Paying Party Legal Counsel

Page: 1

DOPL # : -

Firm Nm :

Name : Terry L. Hutchinson (bankruptcy only)

PO Box 1717

St George, UT 847711717		
(435) 628-1435		
Type : Non-Paying Party - Primary		
DOPL # : 00-295263-5551		
Firm Nm : Sideright Inc		
Name : James Randy Warren, qualifier		
3667 N 2500 W		
Cedar City, UT 847205832		
(435) 586-1634		
Type : Original Contractor/Developer		
DOPL # : 00-295263-5551		
Firm Nm : Sideright Inc		
Name : James Randy Warren, qualifier		
3667 N 2500 W		
Cedar City, UT 847205832		
(435) 586-1634		
DEMOGRAPHIC INFORMATION		
Claim #: LRF-2000-0821-01 Claimant: Western Rock Products Corporat		
DOPL Licensee: yes		
Entity Type: Corporation		
Number of Employees: 100+		
Gross Annual Revenue: 5M AND UP		
Years In Business: 20-49		
Claiming Capacity: Supplier		
NON-PAYING PARTY		
DOPL Licensee: no		
Entity Type:		
===== CLAIMS PROCESSING INFO =====		
	Date Recieved	Date Forwarded
Front Desk	08/21/2000	
Permissive Party Response	09/24/2000	DEADLINE*****
Screen C/D Letter	09/26/2000	
Comments	Page: 001	UserID: ewebster
Conditional denial letter sent September 26, 2000 with response deadline of October 26, 2000		
Page: 2		
Reason for conditional denial:		
1. Inadequate proof of PIF		
10/25/00: Claimant requested prolonged status for claim.		
Claimant Response C/D Letter		
02/27/2001		
10/26/2000		

Comments	Page: 001	UserID: ewebster
Claim was prolonged prior to response due date. Claimant included all necessary documents with request for reactivation of claim. Processing claim for Board review.		
Substantive Review 02/27/2001		
Comments	Page: 001	UserID: ewebster
As far as complying with the documentation requirements of Utah Admin Code R156-38-204a, the claim is complete. However, the Fund personnel are unable to make a recommendation as to whether the claim should be paid, and if so, in what amount because of unresolved issues that need to be addressed by the Board.		
This claim presents the Board with two unusual issues:		
1. Did the owner of the residence or the owner's agent enter into a written contract with the contractor? The facts relevant to this issue are summarized in the Factual Findings Section under subsections related to written contract and owner-occupied residence.		
2. Should the claimant be awarded post-judgement attorney fees in excess of the limit set forth by rule? The facts relevant to this issue are summarized in the Payment Checklist Section under the Post-Judgement Attorney Fees comment.		
Claim Disposition	Approve	02/27/2001
Comments	Page: 001	UserID: ewebster
03/14/01: Board was unable to convene a quorum. Therefore, claim was not reviewed at meeting. Claim forwarded to April 11, 2001 meeting. Interest updated accordingly.		
Board Disposition		***
JURISDICTIONAL CHECKLIST =====		
Completion Of QS	12/01/1999	
Civil Bkcy Filing	02/28/2000	
Difference	89	
Comments	Page: 001	UserID: ewebster
Qualified services date per final job ticket (pg 84)		
Civil action filing date per court date stamp on copy of complaint (pg 30 - 38)		
Page: 3		
Civil Judg/Bkcy Filing	04/26/2000	
LRF App Filing	08/21/2000	
Difference	117	
Comments	Page: 001	UserID: ewebster
Judgement entry date per court date stamp on copy of judgement (pg 44 - 45)		
Claim filing date per DOPL date stamp (pg 1)		

===== COMPLETE APPLICATION CHECK-LIST =====

Form Submitted	Yes	08/21/2000	
Form Completed	Yes	08/21/2000	
Fee	Yes	08/21/2000	0000-09-6616 ICN
Signed Cert/Aff	Yes	08/16/2000	
Cert of Service	Yes	08/16/2000	
Demog. Questionnaire	Yes	08/21/2000	

===== SUPPORTING DOCUMENTS =====

Written Contract	Yes	Written Contract	08/25/1999
Licensing Statute	Yes	License	08/08/1995
Full Payment	Yes	Affidavit	02/01/2001
Civil Action/Bankrupt	Yes	Complaint	02/28/2000
Entitlement to Pmt.	Yes	Civil Judgment	04/26/2000
Exhaust Remedies	Yes	SO/RS/WE/RE	05/05/2000

===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====

Claimant Qualified Beneficiary Yes

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Claimant is a supplier and registered with the Fund October 27, 1995.

Written contract exists Bd

Comments Page: 001 UserID: ewebster

Claimant submitted a copy of the contract executed between Original Contractor and John Fox (pg 11 - 14). The contract is for construction of a new residence. The contract is complete and signed by the Original Contractor and John Fox. However, at the time the contract was executed, John Fox did not own the property on which the residence was to be constructed.

In the claim, the claimant included the following explanation of this situation:

"Although the Grays legally owned the Property at issue in this Application on the date Mr. Fox entered into the contract with Sideright, Inc., the Grays intended that Mr. Fox proceed as if he were in fact Owner of the Property, and he did so. This arrangement was unknown to Claimant or Claimant's attorney at the time of filing the Complaint, thus Grays were listed as Owners. In fact, the Claimant's attorney did not accept Fox's ownership until receipt of the Warranty Deed recorded March 13, 2000. To explain why Fox entered into the contract with Sideright as Owner in August 1999 when he did not legally own the property until March 2000, the Affidavits dated June 29, 2000, were provided. Based on the Affidavits, Claimant's attorney has concluded that Fox was in the Owner, or, at the very least, Fox was the Owner's Agent. Therefore, Fox is a qualified Owner or Owner's Agent, for purposes of this Application for Payment..

The affidavits refered to read as follows:

STATE OF UTAH)

: SS.

COUNTY OF IRON)

Barry J. Gray, being first duly sworn, deposes and states as follows:

1. This affiant is an individual residing in Cedar City, Iron County, Utah
2. This affiant testifies as to the matters set forth in this affidavit based on his own personal knowledge.
3. Prior to May 1999, this affiant's father-in-law, John R. Fox, was a resident of California.
4. Also prior to May of 1999, this affiant and Barbara Gray owned a lot in Cedar City, Utah. The lot already had a house on it, but was big enough for another house. Because this affiant's father-in-law is aging and

desired to be near his daughter and son-in-law, they began discussions about the possibility of John R. Fox moving from California to Utah.

5. At a point prior to May of 1999, the parties determined and agreed that John R. Fox would move to Utah and that he would construct a home on the extra portion of the property next to the home owned by this affiant and Barbara Gray.

6. Therefore, the parties agreed that John R. Fox would construct his home on the extra portion of the lot owned by this affiant and Barbara Gray. It was necessary, of course, to appropriately divide the lot, which was done, and the mortgage against the property was released. This delayed the conveyance. The legal description of the property which was eventually deeded to John R. Fox from this affiant and Barbara Gray is described as follows: [same legal description as found in the claim].

7. During the ensuing several months, John R. Fox treated the Property as if it were his own, and as if the agreement for this affiant to convey the Property to John R. Fox had already been carried out. John R. Fox entered a contract for the construction of his home, paid each and every expense associated with the construction of the home, negotiated with the general contractor and did everything else that an owner of the Property in this circumstance would do.

8. There was never a written agreement for this affiant and Barbara Gray to convey the Property to John R. Fox, however the parties agreed from the inception that they would do so. They were family, their purposes for the conveyance were motivated by family ties, in addition to standard business practices.

9. There was no monetary consideration paid for the transfer of the Property to John R. Fox. This affiant and Barbara Gray did, however, make agreements with John R. Fox regarding the disposition of the home to them as part of John R. Fox's estate when he passed away.

10. The home was eventually conveyed to John R. Fox by deed recorded March 13, 2000.

FURTHER AFFIANT SAYETH NOT

DATED this 29 day of June 2000

/s/ Barry J. Gray

/notary/Brenda Wheelwright

John R. Fox provided a substantially identical affidavit also dated June 29, 2000.

Original Contractor Licensed Yes

Comments Page: 001 UserID: ewebster

Original Contractor holds license 295263-5501. License was issued August 8, 1995 and has been active & in good standing since issuance.

Owner PIF to Contractor Yes

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President of NPP corporation provided affidavit affirming contract was paid in full (pg 88).

Residence Own/Occ as defined Bd

Comments Page: 001 UserID: ewebster

John Fox provided a complete Owner-Occupied Residence affidavit (pg 15). That affidavit shows Fox began occupying the residence December 17, 1999. Construction of the residence was completed February 1, 2000. Per the Warranty Deed (pg 24) Fox became the Owner on March 10, 2000--LRF personnel do not have adequate information to determine whether Fox was a tenant of Gray prior to becoming the owner.

Residence Single Family/Duplex Yes

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Per Owner-Occupied Residence affidavit

Contract For QS Yes

Comments	Page: 001	UserID: ewebster
Claimant submitted job tickets and invoices (pg 56 - 84) showing Claimant sold and delivered building materials to the NPP for use in construction of the incident residence.		
Claimant brought Civil Action		
		Yes
Comments	Page: 001	UserID: ewebster
Default judgement in favor of Claimant and against NPP was entered April 26, 2000		
Exhausted Remedies		
		Yes
Comments	Page: 001	UserID: ewebster
Claimant issued Supp Order May 5, 2000. That Order was served on the president of NPP corporation May 15, 2000 (pg 46 - 49). On August 21, 2000 NPP and NPP's sole shareholder filed for chapter 7 bankruptcy thus stopping Claimant from pursuing further collection efforts.		
Adequate \$ in LRF Fund		
		Yes
Statutory Limit/Payment		
		no
Comments	Page: 001	UserID: ewebster
Total payments for incident residence to date: \$0		
Exceed Monetary Cap		
		No
Comments	Page: 001	UserID: ewebster
Total payments to Claimant to date: \$14,403.81		
Page: 6		
Un-reimbursed Payments		
		no
Comments	Page: 001	UserID: ewebster
To date Fund has paid \$0 of claims on behalf of Claimant and has received \$0 of reimbursements.		

Claim Number:	LRF-2000-0821-01	NCA Number:	NCA-2000-0324-01	Claim Type:	Informal
Claimant Name:	Western Rock Products Corporation				
	Jdg. \$ Informal / Payable \$ Formal	Apportioned % 100.00	CLAIMED	DIFERENCES	
PRINCIPAL AMOUNT	5,029.24	5,029.24	5,029.24	0.00	
ATTORNEY FEES	1,260.00	1,260.00	1,260.00	0.00	
COSTS	194.88	194.88	194.88	0.00	
INT. % 0.00	733.78	733.78	587.76	-146.02	
PRE SUB-TOTAL	2,188.66	2,188.66	2,042.64	-146.02	
ATTORNEY FEES	0.00	0.00	3,487.00	3,487.00	
COSTS	215.80	215.80	215.80	0.00	
INT. % 0.00	0.00	0.00	0.00	0.00	
POST SUB-TOTAL	215.80	0.00	3,702.80	3,487.00	
TOTAL*****	7,433.70	7,433.70	10,774.68	3,340.98	

QUALIFIED SERVICES COMMENT

Comments	Page: 001	UserID: ewebster
Qualified services amount per judgement (pg 44 - 45)		
PRE JUDGEMENT ATTORNEY FEE COMMENT		
Comments	Page: 001	UserID: ewebster
Per-judgement attorney fees per judgement		
PRE JUDGEMENT COSTS COMMENT		
Comments	Page: 001	UserID: ewebster
Pre-judgement costs per judgement		
PRE JUDGEMENT INTEREST COMMENT		
Comments	Page: 001	UserID: ewebster
Per UCA 38-11-203(3)(c) interest calculated at 12% from payment due date to claim approval date--net of delays attributable to the claimant.		
DATES FOR THIS CLAIM:		
Pmt Due Date: January 1, 2000. Claim is silent as to terms of sale assuming industry norm of N/30 (interest begins this date)		
Conditional Denial: September 26, 2000 (interest suspended this date)		
Claimant Response: October 25, 2000 (interest resumes this date)		
Page: 7		
Claim Prolonged at Claimant Request: October 26, 2000 (interest suspended this date)		
Claim Reactivated at Claimant Request: February 27, 2001 (interest resumes this date)		
Board Hearing: April 11, 2001 (interest terminates this date)		
POST JUDGEMENT ATTORNEY COMMENT		
Comments	Page: 001	UserID: ewebster
Claimant submitted attorney's affidavit of costs & fees. Total post-judgement attorney fees per affidavit \$3,487. R156-38-204d(2)(b)(ii) limit for this claim is \$1,257.31. Maximum allowable fees exceeded by sum-certain amount set forth in judgement. LRF personnel recommend all post-judgement fees be denied.		
Claimant's attorney included following in affidavit:		
[Claimant] is entitled to recover attorney's fees in this action by reason of the Judgment dated April 26, 2000 . . . [in the amount of] \$3,487.00, taking into account the following factors:		
a. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;		
b. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;		
c. The fee customarily charged in the locality for similar legal services;		
d. The amount involved and the results obtained;		
e. The time limitations imposed by the client or by the circumstances;		
f. The nature and length of the professional relationship with the client;		
g. The experience, reputation and ability of the lawyer or lawyers performing the services; and		
h. Whether the fee is fixed or contingent.		
LRF personnel find these statements are, at best, generalities that could apply to any claim filing. Therefore, it does not appear that manifest injustice would occur by denial of the excess fees.		

03/13/01: Claimant submitted updated affidavit in support of excessive attorney fees. Copy of affidavit faxed to all Board members. Fund recommends denial of attorney fees as all reasons given by claimant's counsel could have been dealt with in district court. Had claimant properly handled the civil action against homeowner and NPP most of the attorney costs never would have accrued and those that did would have been included in the judgement and therefore payable.

POST JUDGEMENT COSTS COMMENT

Comments Page: 001 UserID: ewebster

Post-judgement costs per attorney's affidavit of costs & fees.

POST JUDGEMENT INTEREST COMMENT

NO Disposition Checklist Information

Minutes from Board Meeting Discussion
Claim No. LRF-2000-0821-01

April 11, 2001

Mr. Webster explained one issue. The contract was between Mr. Fox and Sideright Inc. The property was owned by Mr. Fox's son-in-law and was being gifted to Mr. Fox. Unfortunately, the transfer of title on the property was done after the contract was signed by Mr. Fox and Sideright. This was a new construction contract and Mr. Webster so reviewed the claim. Mr. Burton wanted the minutes to reflect that because the law firm representing Western Rock (Snow Nuffer) has represented Burton Lumber in the past, he would recuse himself. Mr. Webster told the board that there were several issues that should have been resolved in district court. The claimant's attorney is asking for post-judgment costs for pre-judgment work. Mr. Webster recommended payment of the claim in the amount of \$7,171.15. Mr. Jensen moved to approve the claim for payment in the amount of \$7,171.15. Mr. Bankhead seconded. Six voted affirmatively. Mr. Burton abstained.

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY :	ORDER
FUND CLAIM OF WESTERN ROCK :	
PRODUCTS CORPORATION REGARDING :	
THE CONSTRUCTION BY SIDERIGHT, INC. :	Claim No. LRF-2000-0821-01
ON THE RESIDENCE OF JOHN R. FOX :	
LOCATED AT 166 SOUTH 200 EAST, :	
CEDAR CITY, UTAH 84720 :	

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) (1999) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The claimant was a qualified beneficiary during the construction on a residence;
2. The claimant complied with the requirements of UTAH CODE ANN. § 38-11-204; and
3. There is adequate money in the fund to pay the amount ordered.

WHEREFORE, the Director of the Division of Occupational & Professional Licensing orders that the above-encaptioned claim is payable from the Residence Lien Recovery Fund, and that Claimant be paid \$5,026.24 for qualified services, plus \$1,260.00 of pre-judgment attorney fees, \$194.88 of pre-judgment costs, \$0.00 of post-judgment attorney fees, \$215.80 of post-judgment costs, and \$733.78 of interest for a **total claim payment of \$7,433.70.**

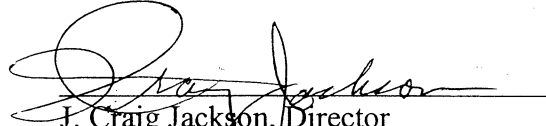
The Director of the Division of Occupational and Professional Licensing also orders that following amounts from the above-encaptioned claims are denied: \$3,487.00 of post-judgment attorney fees exceeding the limit set forth in UTAH ADMINISTRATIVE CODE § R156-38-

204d(2)(b)(ii) (1999). Further, the Director finds denial of the post-judgement attorney fees does not constitute manifest injustice for three reasons. First, a careful reading of the attorney's affidavit of March 9, 2001 obviates that many of the legal fees at issue arose from work performed prior to the judgement entry date. Therefore, the fees are not a post-judgement item. Second, because the fees arose prior to the entry of judgement, the claimant should have included these fees with the request for reimbursement at the district court. Had the issue been raised at district court, the judgement would have identified the fees that were payable to the claimant. Finally, those fees that arose subsequent to the entry of judgement relate to establishing whether the claimant was precluded from foreclosing its mechanics' lien on the property. That issue should also have been resolved at the district court level. Once again, had the claimant raised the issue at the proper level, the judgement would have set forth the amount of fees payable. Further, the judgement would have contained the findings required by UTAH ADMINISTRATIVE CODE § R156-38-204d (1999) thus saving the claimant's attorney several hours, and attendant expenses, in preparing the claim.

The standard of manifest injustice presumes the claimant has made all reasonable and rational efforts to collect what he is owed but some unusual circumstance resulted in those efforts costing many times more than would normally be incurred. In the case at hand, the claimant failed to properly calculate pre-judgement fees; therefore the amount of fees ordered in the judgement was less than what the claimant incurred. Further, the claimant neglected to ensure the judgement included findings adequate to meet the requirements for claim payment and, therefore, incurred substantial legal expenses for the duplication of effort required to prepare a complete claim. Because the post-judgement fees arose from errors by the claimant, the claimant's request for post-judgement attorney fees is tantamount to a request for the Fund to pay

the claimant for the claimant's errors. Clearly, denial of payment for errors by the claimant does not rise to the level of manifest injustice.

DATED this 13th day of April, 2001.


J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 13 day of April, 2001, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

WESTERN ROCK PRODUCTS CORP
820 N 1080 E
ST GEORGE UT 84770-3204

Claimant

TERRY WADE ESQ
SNOW NUFFER ENGSTROM DRAKE WADE & SMART
PO BOX 400
ST GEORGE UT 84721-0400

Counsel for Claimant

JAMES RANDY WARREN
SIDERIGHT INC
3667 N 2500 W
CEDAR CITY UT 84720-5832

Non-Paying Party

TERRY HUTCHINSON ESQ
PO BOX 1717
ST GEORGE 84771-1717

Counsel for Non-Paying Party

Kathie V Schwab
Kathie Schwab, Program Secretary